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Attorney(s) for Appellant(s)

IN THE SUPREME COURT OF THE STATE OF ALASKA

RAYMOND DAPO)	
)	
Appellant,)	
)	
v.)	Supreme Court No: S-17878
)	
TAUN LUCAS,)	
STATE OF ALASKA AND)	
OFFICE OF CHILDREN'S SERVICES,)	
)	
Appellees.)	

Trial Court Case No. 4FA-15-01892 CI

NOTICE OF POTENTIAL CONFLICT

Appellant Dapo recently filed his Opening Brief discussing a factually similar case that Justice Winfree was involved in while in private practice. That case is referenced at pages 16 and 17 of the brief as an example of why an assignment of rights to pursue a third-party apportionment claim is not a violation of public policy -- contrary to reasonings of the trial judge in this case as justifying dismissal of the third-party allocation of fault claim against the Office of Children's Services (OCS).

Dapo does not think this poses even the appearance of a conflict that could cause Justice Winfree to recuse himself, but in an abundance of caution to preserve a five-Justice court, Dapo seeks to bring this potential issue to Justice Winfree's attention at the outset of this case, so that if he does decide to recuse himself, he can

do so in time to replace him.

Dapo does not want this potential issue to be identified late in the appeal, whereby Justice Winfree may recuse himself without sufficient time for the Court to bring in a fifth Justice in order to avoid potential 2-2 split among a four-Justice Court.

As indicated above, Justice Winfree's prior case is referenced at pages 16-17 of the Appellant's Opening Brief. The pertinent part of those pages of the brief are copied below:

It is clear from this Court's decisions examining various assignments that this Court would find that Lucas' assignment is valid under the facts of this case. In fact, one of the sitting Justices on the Court, while in private practice, orchestrated an almost-identical assignment of apportionment rights for the sole purpose of avoiding a statute of limitations problem the plaintiff would have had on a direct claim against the tortfeasor.

Scott Morrison (Morrison) was drinking at a bar in Fairbanks and later crashed his car into Gabriel Kessey (Kessey). Within two years, Kessey sued the Lighthouse Inc., believing it owned the bar where Morrison was over served alcohol. During discovery, Kessey learned that Morrison was actually over served at a different bar owned by Occidental Hotel Company. Knowing he faced a statute of limitations defense to a direct claim against Occidental, Kessey negotiated an assignment of Lighthouse's apportionment rights under AS 09.10.080 against Occidental, and as assignee, filed an apportionment claim against Occidental.¹ The Superior Court accepted the assignment and allocation fault claim by Kessey, as assignee of Lighthouse.² Occidental settled the apportionment claim by paying Kessey an undisclosed sum. Attorney Daniel Winfree represented Lighthouse throughout the assignment transaction.³

¹ Exc. 123-127 (footnote 90 in Dapo's brief).

² Exc. 119-122 (footnote 91 in Dapo's brief).

³ Exc. 112-127 (footnote 92 in Dapo's brief).

DATED at Fairbanks, Alaska this 5th day of March, 2021.

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CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that on March 5th, 2021, a true and correct copy of the foregoing document were served via e-mail on the following:

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I further certify, pursuant to Rule 513.5, that the above documents were prepared in Arial 12.5-point typeface.

KRAMER and ASSOCIATES

By /s/ Arnell Tinajero
Arnell Tinajero